

## Internal Revenue Service

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## Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

Telephone Number:

Refer Reply To:

CC:INTL:B03

PLR-125270-09

Date:

September 23, 2009

Acquirer =

US Sub =

Target =

Foreign NewCo =

US NewCo =

\$a =

Date =

Dear \_\_\_\_\_ :

This letter responds to a request for rulings dated May 14, 2009 regarding certain federal income tax consequences of a series of transactions. The information submitted for consideration is summarized below. Unless otherwise indicated, references herein to code sections and regulation sections are to the applicable Internal Revenue Code and Income Tax Regulations.

Acquirer, a domestic corporation, owns, through disregarded entities, 100 percent of the stock of US Sub, a domestic corporation.

On Date, US Sub acquired all of the stock of Target, a domestic corporation, for cash in a taxable transaction (the "Target Acquisition") effected through a reverse subsidiary cash merger.

After the Target Acquisition, pursuant to a series of transactions the following occurred for U.S. tax purposes:

(i) Target converted to a foreign corporation ("Foreign NewCo") in a transaction that qualified as a reorganization within the meaning of section 368(a)(1)(F) of the Code (the "Outbound Reorganization").

(ii) Foreign NewCo transferred a portion of its assets and liabilities to US NewCo, a newly formed domestic corporation, in exchange for all the US NewCo stock (the "Contribution").

(iii) US Sub distributed its assets to Acquirer in a complete liquidation qualifying under section 332.

As a consequence of the Outbound Reorganization, Foreign NewCo succeeded to the Target tax attributes enumerated in section 381(c), including approximately \$a of earnings and profits of Target (the "Target E&P").

Following the Contribution, US NewCo is expected to generate earnings and profits. US NewCo may distribute such earnings and profits as a dividend to its 100 percent owner, Foreign NewCo.

Foreign NewCo may distribute its earnings and profits, including earnings and profits attributable to any dividends it receives from US NewCo, to its 100 percent owner, Acquirer.

The following representations have been made with respect to the transaction:

(a) Foreign NewCo is a controlled foreign corporation (“CFC”) within the meaning of section 957, and Acquirer is a U.S. shareholder with respect to Foreign NewCo within the meaning of section 951(b).

(b) Dividends received by Foreign NewCo from US NewCo are included in Foreign NewCo’s gross income and constitute foreign personal holding company income, a type of subpart F income, pursuant to section 954(c)(1)(A).

(c) Dividends received by Foreign NewCo from US NewCo are not effectively connected with the conduct by Foreign NewCo of a trade or business within the United States within the meaning of section 952(b).

(d) Foreign NewCo is not a passive foreign investment company as defined in section 1297.

(e) US NewCo is subject to taxation under chapter 1 of the Code.

## LAW

Section 957 defines a CFC as a foreign corporation with regard to which more than 50 percent of the total combined voting power of all classes of stock entitled to vote or the total value of the stock of the corporation is owned (directly, indirectly, or constructively) by U.S. shareholders.

Section 951(b) defines a U.S. shareholder for CFC purposes as a U.S. person who owns (directly, indirectly, or constructively) 10 percent or more of the total combined voting power of all classes of stock entitled to vote of the foreign corporation.

Section 7701(a)(30) defines a U.S. person as a U.S. citizen or resident, a domestic partnership, a domestic corporation and any domestic estate or trust.

Section 951(a) provides that a U.S. shareholder of a CFC who owns (within the meaning of section 958(a)) stock in the CFC shall include in gross income his pro rata share of the CFC’s subpart F income for the year.

Section 958(a) provides that stock owned means stock owned directly and stock owned indirectly through foreign entities as provided in section 958(a)(2).

Section 952 defines subpart F income to include foreign base company income, as determined under section 954. Section 954(a) provides that the term “foreign base company income” includes foreign personal holding company income, as determined under section 954(c). Section 954(c)(1)(A) provides that the term “foreign personal holding company income” includes dividends.

In relevant part, Treas. Reg. § 1.952-2(a) provides, in general, that the gross income of a foreign corporation for any taxable year shall be determined by treating such foreign corporation as a domestic corporation taxable under section 11 and by applying the principles of section 61 and the regulations thereunder.

Treas. Reg. § 1.952-2(b)(i) provides, in general, that the taxable income of a foreign corporation for any taxable year shall, subject to the special rules of Treas. Reg. § 1.952-2(c), be determined by treating such foreign corporation as a domestic corporation taxable under section 11 and by applying the principles of section 63.

Section 63(a) provides that, except as provided in section 63(b), for purposes of subtitle A of the Code, the term “taxable income” means gross income minus the deductions allowed by sections 1 through 1400 (other than the standard deduction).

Section 243(a) provides that in the case of a corporation there shall be allowed as a deduction an amount equal to a certain percentage of the amount received as dividends from a domestic corporation which is subject to taxation under this chapter.

Section 243(c) provides that in the case of any dividend received from a 20-percent owned corporation, the appropriate percentage is 80 percent. For this purpose, the term “20-percent owned corporation” means any corporation if 20 percent or more of the stock of such corporation (by vote and value) is owned by the taxpayer. Also, for this purpose, stock described in section 1504(a)(4) shall not be taken into account.

Section 245(a)(1) provides that in the case of dividends received by a corporation from a qualified 10-percent owned foreign corporation, there shall be allowed as a deduction an amount equal to the percent (specified in section 243 for the taxable year) of the U.S.-source portion of such dividends.

Section 245(a)(2) provides that a “qualified 10-percent owned foreign corporation” is any foreign corporation (other than a passive foreign investment company) if at least 10 percent of the stock of such corporation (by vote and value) is owned by the taxpayer.

Section 245(a)(3) provides that the U.S.-source portion of any dividend is an amount which bears the same ratio to such dividends as the post-1986 undistributed U.S. earnings bears to the total post-1986 undistributed earnings.

Section 245(a)(4) provides that the term “post-1986 undistributed earnings” has the meaning given to such term by section 902(c)(1).

Section 245(a)(5) provides that post-1986 undistributed U.S. earnings includes the portion of the post-1986 undistributed earnings attributable to any dividend received (directly or through a wholly owned foreign corporation) from a domestic corporation at least 80 percent of the stock of which (by vote and value) is owned (directly or through

such wholly owned foreign corporation) by the qualified 10-percent owned foreign corporation.

Earnings and profits of a corporation are not decreased by an amount allowed as a deduction for dividends received. Weyerhaeuser v. Commissioner, 33 BTA 594 (1935).

## RULINGS

(1) The Target E&P succeeded to by Foreign NewCo pursuant to section 381 as a result of the Outbound Reorganization shall not be included in Foreign NewCo's post-1986 undistributed earnings, pre-1987 accumulated profits, or pre-1987 section 960 earnings and profits.

(2) For purposes of calculating Foreign NewCo's net foreign base company income, subject to applicable limitations, including those provided under section 246, Foreign NewCo shall be allowed as a deduction an amount equal to 80 percent of the amount received as dividends from US NewCo. Section 243(a) and (c).

(3) Subject to applicable limitations, including those provided under section 246, Acquirer shall be allowed as a deduction an amount equal to 80 percent of the U.S.-source portion of dividends received from Foreign NewCo. Sections 245(a) and 243(a) and (c).

(4) For purposes of ruling 3, the post-1986 undistributed U.S. earnings taken into account in computing the U.S.-source portion of the dividends received includes the portion of the post-1986 undistributed earnings attributable to dividends received from US NewCo. Section 245(a)(5).

(5) Foreign NewCo's earnings and profits shall not be decreased by the amount allowed as a deduction described in ruling 2. Acquirer's earnings and profits shall not be decreased by the amount allowed as a deduction described in ruling 3. Weyerhaeuser v. Commissioner, 33 BTA 594 (1935).

## CAVEATS

The rulings contained in this letter are based upon information and representations submitted by the Taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this Office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. We express no opinion about the tax treatment of the transactions under

other provisions of the Code and regulations or on the tax treatment of any condition existing at the time of, or effects resulting from, the transaction that are not specifically covered by the above rules. For example, no ruling is provided as to the application of section 243(e) to Acquirer, including the applicable percentage of any amount eligible for a deduction, with respect to dividends from Foreign NewCo attributable to the Target E&P succeeded to by Foreign NewCo pursuant to section 381 as a result of the Outbound Reorganization.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

John J. Merrick  
Special Counsel  
(International)